

# **Exhibit 2**

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

---

In re:

RESIDENTIAL CAPITAL, LLC, et al.,

Debtors

---

Case No. 12-12020 (MG)

Chapter 11

Jointly Administered

---

DEPOSITION OF CLIFFORD ROSSI

DATE: December 19, 2012

HUDSON REPORTING & VIDEO, INC.

124 West 30th Street, 2nd Fl.

New York, New York 10001

Tel: 212-273-9911 Fax: 212-273-9915

TRANSCRIPT of the deposition, said  
deposition being conducted pursuant to Rules  
Governing Civil Practice in the Superior Court  
of New Jersey, by and before MARK IUZZOLINO,  
Certified Shorthand Reporter, License No.  
X101103, at the offices of Morrison & Foerster,  
LLP, 1290 6th Avenue, New York, NY, on December  
19, 2012, commencing at 10:36 a.m.

1 A. I do.

2 Q. What do you teach, sir?

3 A. I teach masters-level courses in bank  
4 management, another course on derivatives  
5 pricing, and a third course on corporate risk  
6 management, which is really hedging using  
7 derivatives.

8 Q. Okay. Have you ever taught any other  
9 courses at the school?

10 A. I have. I have taught on occasion  
11 some courses, for example, in our executive MBA  
12 program, which would include -- for example, we  
13 had a group from the China Development Bank  
14 over in which it was all about risk management,  
15 best practices in risk management, this past  
16 summer. I was the academic been director for  
17 that as well as an instructor, and we covered a  
18 variety of different technical and nontechnical  
19 aspects of things, such as what good governance  
20 would be from a risk management standpoint as  
21 well as various credit techniques which you  
22 would use in assessing creditors.

23 Q. How long did that teaching experience  
24 last, the one you just testified to?

25 A. That has gone -- that one course went

1 for two weeks. They were over here for two  
2 weeks.

3 Q. And how many people were in the  
4 audience for your presentations?

5 A. They brought around 30.

6 Q. Okay. And that particular  
7 curriculum, have you ever otherwise taught  
8 anybody that curriculum?

9 A. Not that curriculum.

10 Q. Okay. Have you, other than you  
11 already testified, taught any other subjects  
12 either at your present school or any other  
13 school or university?

14 A. I had been an adjunct -- and I think  
15 that's on my CV that was provided -- for about  
16 eight years when I was working full time at  
17 Freddie Mac, and during that time I taught a  
18 course on asset-backed securitization, but that  
19 would be, to my recollection, the only other  
20 one that I've taught.

21 Q. Okay. And when did you teach that  
22 course?

23 A. I believe that would have been -- it  
24 was certainly prior to 2000 but I can't be more  
25 specific than that.

1 review certain documents.

2 A. I will follow my counsel's advice and  
3 not respond.

4 MR. PRINCI: So I'm going to need to  
5 know in order to be able to understand his  
6 expert opinion what his decision-making  
7 process was in connection with his  
8 analysis. So I'm going to need an answer  
9 to that question. I'm going to ask  
10 again -- and you can instruct him not to  
11 answer and he can take your advice or  
12 not. But I just want to be clear what  
13 question I need to have answered.

14 Q. Who made the decision as to the  
15 information that you received and reviewed?

16 That choice of information, who made  
17 the decision that you should review that  
18 information?

19 MR. SIDMAN: Objection.

20 Let's go off the record for one  
21 second because I want to make sure I  
22 understand.

23 MR. PRINCI: Sure.

24 MR. SIDMAN: I'm just going to talk  
25 to my witness outside.

1 MR. PRINCI: Sure.

2 (There is a recess taken.)

3 (Counsel requests the

4 reading of the following testimony:

5 Q. Who made the decision as to the

6 information that you received and reviewed?

7 That choice of information, who made

8 the decision that you should review that

9 information?)

10 A. And the answer is Jones Day.

11 Q. Okay. There's an Exhibit B to

12 your -- to your report that has a list of -- it

13 says it's a list of all the information that

14 you reviewed.

15 Is that, in fact, all the information

16 that you reviewed?

17 MR. SIDMAN: Objection.

18 Exhibit B is not here in front of us.

19 The witness doesn't have a copy of it.

20 But if you can answer the question

21 based on your understanding of the

22 report --

23 Q. I don't want -- if you're

24 uncomfortable with that without the document in

25 front of you, I'll put the document in front of

1 listed in Exhibit B."

2 Do you see that?

3 A. I see it.

4 Q. And Rossi 2 is Exhibit B. Okay?

5 And my question is: Are there any  
6 other documents that you reviewed or relied  
7 upon in connection with formulating the  
8 opinions you express in your report, other than  
9 what's in Exhibit B and also Exhibit A, which  
10 is the OCC report.

11 A. Right. I see the publicly available  
12 documents. That was the only caveat I was  
13 going to make.

14 Q. Okay.

15 A. So these are the documents I  
16 reviewed.

17 Q. And again, this is a list of  
18 information that Jones Day decided to send you.  
19 Correct?

20 A. Correct.

21 Q. Okay. So going back to paragraph  
22 one, you say you were asked to assess the  
23 process.

24 What standard did you use to assess  
25 the process?

1 MR. SIDMAN: Objection.

2 A. In part, I used as a standard to  
3 assess the process, since -- since I was being  
4 asked to look at this, included the materials  
5 that you saw in there, certainly the Office of  
6 the Comptroller of the Currency, information  
7 that was provided on board of directors was  
8 a -- was and is an important guidepost for best  
9 practices and board performance. As it relates  
10 to issues that I call out with respect to risk  
11 governance, those are largely drawn from a  
12 combination of just professional experience at  
13 senior-level positions that I've held and  
14 having interacted with many senior-level  
15 executive risk executives in the financial  
16 services for many years.

17 Q. Okay. So correct me if I'm wrong,  
18 the standards you used came from the guidance  
19 you got from the OCC report and your  
20 professional experience. Correct?

21 A. Right.

22 MR. SIDMAN: Objection.

23 Q. And was there any other standard that  
24 you used to assess the process?

25 A. I do call out in the document, for

1 example, some information relating to  
2 PricewaterhouseCoopers' document, which was a  
3 survey of board members. And I used that as  
4 part of my standard in relating to the timing  
5 of certain matters with respect to board  
6 deliberations on this issue.

7 Q. And other than that, was there any  
8 other standard you used to assess the process?

9 MR. SIDMAN: Objection.

10 A. I believe I've just described what I  
11 used, yes.

12 Q. And how long did it take you to  
13 assess the process?

14 A. Well, certainly less than 100 hours.  
15 I'm not sure. But I do know that it  
16 was -- that I had a lot of material to go  
17 through and consider.

18 Q. Okay. What percent of the 100 hours  
19 do you think is fairly attributable to your  
20 assessing the process?

21 MR. SIDMAN: Objection.

22 A. I would say approximately two-thirds  
23 to three-quarters of the time.

24 Q. Okay. Other than reviewing the  
25 information that Jones Day provided you, did

1 MR. SIDMAN: Objection.

2 A. Something other than this case and I  
3 can't recall what it was, but it was not this  
4 case that prompted me to prepare this.

5 Q. Okay. Is all the information in this  
6 CV true?

7 A. Yes.

8 Q. Have you ever been a member of a  
9 board of directors?

10 A. I have been a member of a board of  
11 directors.

12 Q. And how many?

13 A. I believe two.

14 Q. What are the names of those entities  
15 on whose boards you sat?

16 A. Yes.

17 MR. SIDMAN: Objection.

18 A. The first was Washington Mutual. It  
19 was a subsidiary board of the company, I  
20 believe. And the other was Citigroup. And I  
21 believe it was CitiMortgage, again subsidiary  
22 board.

23 Q. Do you remember the name of the  
24 entity that was affiliated with WaMu on whose  
25 board you sat?

1 MR. SIDMAN: Objection.

2 A. It's been awhile and I don't believe  
3 I recall specifically.

4 Q. Okay. Do you recall when you were  
5 named to that company's board?

6 A. I recall it may have been within the  
7 first couple of months of my arrival at  
8 Washington Mutual. So it might have been  
9 sometime in early 2007.

10 Q. Okay. And how long did you sit on  
11 that board?

12 A. I believe I was on that board for  
13 several months until my departure for  
14 Citigroup.

15 Q. Okay. And do you recall what type of  
16 corporate entity that company was whose board  
17 you sat on?

18 MR. SIDMAN: Objection.

19 A. It was -- I believe it was a mortgage  
20 company.

21 Q. Mortgage company.

22 Was it a corporation?

23 A. I don't recall.

24 Q. Do you recall if it was a limited  
25 liability company?

1 A. I do not recall.

2 Q. Do you recall if it was a regulated  
3 bank?

4 A. Not sure. Don't recall.

5 Q. Okay. Do you recall how many board  
6 meetings you attended as a member of that  
7 board?

8 A. I don't recall.

9 Q. Do you recall any decisions that that  
10 board made?

11 A. Not off the top of my head.

12 Q. Do you recall any issues you  
13 considered as a board member of that board?

14 A. Not -- no, not off the top of my  
15 head.

16 Q. Okay. Do you recall how much time  
17 you spent as a board member for that board?

18 A. I do not.

19 Q. Okay. Can I take it from your lack  
20 of recollection that it wasn't a significant  
21 engagement, if you will?

22 MR. SIDMAN: Objection.

23 A. It certainly was significant from the  
24 standpoint that they were naming me as a  
25 corporate officer of Washington Mutual to sit

1 on there, but let's face it, it's been over  
2 five years and several institutions since then.

3 Q. Understood. So you wouldn't have  
4 from that experience a fresh recollection of  
5 those particulars. Correct?

6 A. That is correct.

7 Q. Do you remember -- excuse me.

8 Do you know the name of the Citigroup  
9 affiliated entity on whose board you sat?

10 A. I believe it would have been related  
11 to CitiMortgage. It was one of the four  
12 business interviews over which I saw this for  
13 the consumer lending group.

14 Q. Is that the name of the company,  
15 CitiMortgage?

16 A. Yes.

17 Q. And are you aware of whether at the  
18 time you sat on this board it was a  
19 corporation?

20 A. I didn't pay too much attention,  
21 quite honestly, to the legal vehicle and  
22 structure of it. Just knew that I needed to --  
23 I was being asked to sit on that board.

24 Q. So, to your understanding, the nature  
25 of the corporate vehicle wasn't important,

1 risk officer, and because of changes that were  
2 ongoing with the organization at the time, I  
3 wound up overseeing risk for their global  
4 mortgage portfolio, which also included  
5 CitiMortgage and CitiFinancial. So at that  
6 time, which would have been in the last six  
7 months of my tenure, I removed myself or I no  
8 longer was a part of that board.

9 Q. So how long a period were you not on  
10 the board during that tenure?

11 A. Yeah, I'm thinking it was about a  
12 year.

13 MR. SIDMAN: Objection.

14 Q. So all in, how long were you on the  
15 board, to the best of your recollection?

16 MR. SIDMAN: Objection.

17 A. About a year.

18 Q. And during that year when you sat on  
19 the CitiMortgage board, how many board meetings  
20 did you attend?

21 A. I think these board meetings were  
22 quarterly board meetings.

23 Q. So approximately four?

24 A. Approximately.

25 Q. And as a member of the board were you

1 involved in the issuance of any board  
2 resolutions?

3 A. We were -- I'm not sure that I can --  
4 could you define "resolutions"?

5 Q. Sure. It's a decision by the board.

6 A. Right. Oh, sure, we definitely had a  
7 number of decisions that we would be asked to  
8 opine on and approve.

9 Q. Okay. Do you recall how many such  
10 decisions were made during your tenure?

11 A. Gosh, I would not know how many that  
12 we actually looked at each one of those  
13 meetings.

14 Q. Do you recall ever being given a  
15 draft of board resolutions?

16 MR. SIDMAN: Objection.

17 A. When you say "a draft," meaning to  
18 evaluate a head of the actual meeting or are  
19 you actually talking about after the meeting?

20 Q. Before it became the resolution of  
21 the board.

22 A. I see. Yes, I believe we received  
23 materials ahead of time.

24 Q. Okay. Do you recall approximately  
25 how many board resolutions, that is

1 memorialized decisions of that board, were  
2 issued during your tenure?

3 MR. SIDMAN: Objection.

4 A. Again, I think I need a clarification  
5 on this --

6 Q. Sure.

7 A. -- because it almost sounds like  
8 you're asking that same question from earlier,  
9 which is how many resolutions did I actually  
10 see when I was on the board. Is that correct?

11 Q. How many do you recall that the board  
12 issued?

13 A. I don't recall.

14 Q. Do you recall how much time you  
15 invested as a board member?

16 MR. SIDMAN: Objection.

17 A. It was not my primary responsibility.

18 Q. What was, by the way?

19 MR. SIDMAN: Objection.

20 A. At that time, being chief risk  
21 officer for the consumer lending group -- US  
22 consumer lending group.

23 I would certainly say it was small  
24 compared to the rest of my responsibilities  
25 because we were meeting only quarterly.

1 Q. Now, going back to WaMu, that  
2 affiliate board you sat on, do you know what  
3 state's law governed your actions as a board  
4 member?

5 MR. SIDMAN: Objection.

6 A. It has been so many years, I could  
7 not tell you.

8 Q. Same question with respect to  
9 CitiMortgage.

10 MR. SIDMAN: Objection.

11 A. I would be in the same camp there,  
12 too.

13 Q. Understood. Now, is it your  
14 understanding that a director's duties are  
15 governed by the law of the state in which the  
16 corporation is either registered or  
17 incorporated?

18 MR. SIDMAN: Objection. Calls for a  
19 legal conclusion.

20 A. Yeah, I -- I'm not a legal scholar on  
21 these matters --

22 Q. Understood.

23 A. -- so I'm not sure I'd be providing  
24 you with a reasonable answer because I simply  
25 don't know.

1 Q. Okay. So your lack of understanding  
2 of this is such that you can't answer that  
3 question?

4 MR. SIDMAN: Objection.

5 A. I'm not saying that. I'm just saying  
6 I don't think for me to render a legal opinion  
7 on this matter probably makes the most sense.

8 Q. Okay. I'm not asking for your view  
9 on that, first, and second of all, I'm asking  
10 for your understanding. So let me just give  
11 you the question again.

12 Is it your understanding that a  
13 director's duties are governed by the laws of  
14 the state in which the -- the company on whose  
15 board that person sits is registered or  
16 incorporated?

17 MR. SIDMAN: Same objection.

18 A. Since you're asking me that question,  
19 and we've covered this territory, I'll say  
20 that's my general understanding.

21 Q. What's your general understanding  
22 based on?

23 A. My general understanding is based on  
24 materials that would have been provided to me  
25 at the time I would have been involved.

1 just say this: By the time I left Washington  
2 Mutual, it was still an on going concern, so I  
3 do not know.

4 Q. During your tenure on the WaMu  
5 affiliate board, did that board ever consider  
6 the filing for Chapter 11 protection of that  
7 company?

8 A. I certainly do not recall that at any  
9 time I was on board.

10 Q. Same question with respect to  
11 CitiMortgage.

12 A. And I do not recall that they were  
13 ever involved with any deliberations on Chapter  
14 11 during my tenure.

15 Q. During your tenure on the Washington  
16 Mutual affiliate board, did that board ever  
17 consider whether to settle a lawsuit or any  
18 threatened litigation?

19 MR. SIDMAN: Objection.

20 A. I don't recall.

21 Q. Same question with CitiMortgage.

22 A. I recall vaguely that there were  
23 discussions regarding put-back requests that  
24 CitiMortgage was making upon other sellers that  
25 it had received loans from, but it's vague.

1 Q. Okay. And in that regard, did -- do  
2 you recall whether the board considered whether  
3 to settle any lawsuit or any threatened  
4 litigation?

5 MR. SIDMAN: Objection.

6 A. I'm not -- I don't recall that --  
7 that that was discussed.

8 Q. Other than board meetings associated  
9 with the WaMu affiliate with CitiMortgage, have  
10 you ever otherwise attended a meeting of a  
11 board of directors?

12 A. Yes.

13 Q. And of what company?

14 A. Of Countrywide.

15 Q. And which Countrywide entity, sir?

16 A. Both Countrywide Bank as well as  
17 Countrywide Financial.

18 Q. On how many occasions did you attend  
19 any such board meetings?

20 A. These meetings were quarterly as  
21 chief credit and then chief risk officer of  
22 Countrywide Bank. I was management liaison to  
23 Countrywide Bank, that was -- which was the  
24 wholly-owned subsidiary of Countrywide  
25 Financial, and I would have appeared at each

1 subject that you addressed at those board  
2 meetings?

3 MR. SIDMAN: Objection.

4 A. My -- the subject that I was focused  
5 on, given my role there, was on risk  
6 management.

7 And let me just, again, state very  
8 clearly for the record, I had that same role at  
9 Washington Mutual. I was management liaison to  
10 the Washington Mutual board credit  
11 subcommittee -- finance and credit  
12 subcommittee.

13 Q. Understood. Have you ever been  
14 retained to advise a board of director on how  
15 to conduct himself in the fulfillment of that  
16 person's board obligations?

17 MR. SIDMAN: Objection.

18 A. I have not.

19 Q. Have you ever been retained by  
20 anybody to provide advice regarding how a board  
21 director should conduct themselves in  
22 fulfillment of their board obligations?

23 MR. SIDMAN: Objection.

24 A. No.

25 Q. Have you ever been a decision maker

1 in connection with whether a lawsuit or a  
2 threatened lawsuit should be settled?

3 MR. SIDMAN: Objection.

4 A. I -- I'm not sure, simply because the  
5 passage of time at several of those  
6 institutions that we just mentioned,  
7 Countrywide, Washington Mutual and Citigroup,  
8 has been a while ago. So I don't want to say  
9 yes. I'm not sure.

10 Q. But certainly, as you sit here today,  
11 you don't have any recollection of that.

12 Correct?

13 A. One way or the other.

14 Q. Correct.

15 A. Correct.

16 MR. PRINCI: Let me take another five  
17 minutes.

18 THE WITNESS: Sounds good.

19 (There is a recess taken.)

20 BY MR. PRINCI

21 Q. Mr. Rossi, have you ever been  
22 involved in any other capacity in the decision  
23 as to whether to settle a lawsuit or a  
24 threatened litigation?

25 A. I can say that, for example, at

1 Countrywide, in sitting at various management  
2 committee meetings -- senior management  
3 committee meetings we had discussed aspects  
4 relating to GSE repurchase demands at times  
5 made by Countrywide -- made by one of the GSEs  
6 with respect to Countrywide Financial.

7 Q. And in that regard, did you get  
8 involved in a discussion as to whether to  
9 settle a lawsuit or a threatened litigation?

10 MR. SIDMAN: Objection.

11 A. What I got involved with was a matter  
12 which would -- if you want to refer to one of  
13 the GSE's repurchase demands from the  
14 standpoint of a settlement, however you want to  
15 refer to it, it was to that extent only.

16 Q. When was this?

17 A. This would have been around the  
18 latter -- maybe the latter part of my tenure.  
19 I think around 2007.

20 Q. Okay. Which GSE?

21 A. Fannie Mae.

22 Q. What were they seeking from  
23 Countrywide?

24 A. They were seeking repurchase of some  
25 loans that had been sold to Fannie Mae by

1     Countrywide at that time -- sometime in the  
2     years before.

3           Q.    They were seeking to have Countrywide  
4     repurchase some loans.  Correct?

5           A.    That's correct.

6           Q.    Okay.  And what was your role in that  
7     discussion?

8           A.    My role in that discussion was in  
9     understanding some of the -- contributing to  
10    the risk profile of what those loans looked  
11    like.

12          Q.    Okay.  And who's the decision maker  
13    at that time for Countrywide with regard to  
14    that matter.

15            MR. SIDMAN:  Objection.

16          A.    Ultimately, the senior executives at  
17    Countrywide Financial.

18          Q.    Okay.  And at the time you were --  
19    you were working in your capacity for the bank?

20          A.    I believe at that time I was working  
21    in my capacity as what was called then -- I was  
22    a dual employee at the time, between the parent  
23    and the subsidiary.  I was no longer chief risk  
24    officer but acting in still a senior risk  
25    management role between both companies.

1 Q. Okay. So you didn't make the  
2 decisions. Correct?

3 MR. SIDMAN: Objection.

4 A. I was -- my counsel was sought in  
5 part for the decision but I did not ultimately  
6 carry the decision.

7 Q. Have you ever been asked to speak or  
8 address an audience on the subject of how a  
9 director should conduct him or herself in the  
10 fulfillment of their board obligations?

11 MR. SIDMAN: Objection.

12 A. Yes.

13 Q. And when was that and where?

14 A. I was on a panel at the -- at our  
15 business school's directors institute and I was  
16 requested by the head of that institute to  
17 appear on a panel with other -- several other  
18 experts in the field of governance, and this  
19 was on risk governance in particular, and it  
20 included discussions about board conduct and  
21 its interrelationship to risk management.

22 Q. Okay. So it was primarily in risk  
23 governance. Correct?

24 A. Primarily, but it was -- the panel  
25 that I was on, but the entire conference was on

1 board -- public board participation.

2 Q. And when was this conference?

3 A. I believe it was last summer.

4 Q. And where was this panel held?

5 A. It was in Washington, DC.

6 Q. Okay. Other than that, any other  
7 indications?

8 A. I spoke -- yes, I prepared an  
9 analysis -- actually, it was a paper that was  
10 at the request of the current acting director  
11 of the office of financial research last year,  
12 Richard Berner, to put together a study of best  
13 practices in risk management, which part of  
14 that study talked about senior management and  
15 board-related issues, cognitive bias, risk  
16 incentives, or something like that.

17 Q. So if you could look at what has been  
18 marked as I believe Rossi 3. That's your CV?

19 A. Correct.

20 Q. And could you tell me if the  
21 particular study you're referring to is  
22 referenced on this?

23 A. Yes. Actually, it was -- there are  
24 two.

25 Q. Uh-huh.

1 A. It's on page six.

2 Q. And the name?

3 A. Very top, incentives, behaviors and  
4 cognitive advice and the risk function --

5 Q. Okay.

6 A. -- and then forging best practices  
7 and risk management below that.

8 Q. Okay. So if I go to those papers,  
9 I'll see that you addressed the topic of how a  
10 director on the board should conduct him or  
11 herself in the fulfillment of their board  
12 obligations. Correct?

13 MR. SIDMAN: Objection.

14 A. You will see in that paper what goes  
15 into the thinking of senior executives and  
16 boards and how that can actually cause problems  
17 downstream in decision making at those  
18 institutions.

19 Q. Will I see what I just said?

20 MR. SIDMAN: Objection. Asked and  
21 answered.

22 A. I'm not sure how that differs from  
23 what I just said.

24 Q. Okay. So in those papers am I  
25 correct you address how a board director should

1 act in order to fulfill a board director's  
2 obligations. Correct?

3 MR. SIDMAN: Objection.

4 A. I talk about the behaviors and  
5 expectations of what senior managers and boards  
6 should have in coming to decisions --  
7 significant decisions for risk management.

8 Q. And other than that, is there  
9 anything else you address relating to how a --  
10 how a board member should fulfill his or her  
11 obligations as a board member?

12 MR. SIDMAN: Objection.

13 If you know.

14 A. You know, I would take you to this  
15 other -- this fourth paper down here, lessons  
16 and --

17 Q. Sir, which page is that?

18 A. Let's see. This is -- it's the wrong  
19 one. It's the one on the bottom of page six  
20 that's called "Anatomy of risk management  
21 practices in the mortgage industry" --

22 Q. Okay.

23 A. -- "lessons for the future." In that  
24 paper I again have a discussion -- it's largely  
25 a paper about risk management practices but it

1 also gets at issues relating to senior  
2 management, cognitive biases we call them,  
3 which really relate to boards and to senior  
4 executive management at large financial  
5 institutions that were originating mortgages  
6 during the housing boom.

7 Q. And in that paper do you address how  
8 a board director should conduct themself in  
9 order to make sure they fulfill their board  
10 obligations.

11 MR. SIDMAN: Objection.

12 A. There are not -- not in that specific  
13 terms.

14 Q. Have you ever been retained to advise  
15 anyone in connection with a potential  
16 settlement of a lawsuit or a threatened  
17 litigation?

18 MR. SIDMAN: Objection.

19 Other than what he's testified about  
20 already?

21 A. That was going to be my clarifying  
22 question, other than what I testified to today?

23 Q. Including what you testified today,  
24 have you ever been retained to advise anyone in  
25 connection with the potential settlement of a

1 lawsuit or a threatened litigation?

2 MR. SIDMAN: Objection.

3 A. Beyond today, I have not.

4 Q. Meaning beyond representing FGIC as  
5 an expert in this case?

6 MR. SIDMAN: Objection.

7 A. Again, let me clarify. We're  
8 precluding any prior testimony that I may have  
9 provided as a fact witness.

10 Q. Correct, yes, sir.

11 A. So given that, I have not.

12 Q. Why did you -- I'm looking at your  
13 CV, just in case you want to reference it. I'm  
14 looking at page five.

15 You left DRS in February of 1991.

16 Why did you leave the DRS then?

17 MR. SIDMAN: Objection.

18 A. I left DRS to go to -- I believe I  
19 may have gone to Treasury Department for  
20 promotion at that time.

21 Q. Okay. And why did you leave Fannie  
22 Mae in July of '94?

23 MR. SIDMAN: Objection.

24 A. To go back to OTS at a promotion.

25 Q. Okay. Go to page four of your CV.

1                   Do you see that?

2           A.    I see that.

3           Q.    Okeydoke. Now, what standard did you  
4 use to assess the quality of the involvement  
5 and interaction of key participants in  
6 deliberations regarding the proposed  
7 settlement?

8                   MR. SIDMAN: Objection.

9           A.    The standards that I'm using are  
10 those that are based on a combination of the  
11 materials that we spoke to earlier, so the OCC  
12 document with respect to just the board, and  
13 then also my own extensive experience in  
14 overseeing risk at several of the largest  
15 financial institutions originating mortgages.

16           Q.    Anything else? Any other standard  
17 against which you measured the involvement and  
18 interaction of key participants in the  
19 deliberations regarding the proposed  
20 settlement?

21                   MR. SIDMAN: Objection.

22           A.    So that would include any of my  
23 writings on these subjects that we covered  
24 earlier. It would include some of the other --  
25 particularly the PricewaterhouseCoopers

1 document that I referenced regarding board.

2 And beyond that, as I said, my personal  
3 experience in overseeing risk.

4 Q. Okay. So PricewaterhouseCoopers,  
5 have they issued a standard that people should  
6 follow?

7 MR. SIDMAN: Objection.

8 A. You know, I'm not sure, but I know  
9 that they perform an annual survey of board  
10 members. And that's a fairly, you know, well  
11 known -- they, in conjunction with corporate  
12 board, I think it is, compile information  
13 surveying best practices in boards and whatnot.

14 Q. So they provide -- am I right --  
15 statistical information? Correct?

16 A. Largely speaking.

17 Q. And you're not aware, though, of  
18 PricewaterhouseCoopers having published any  
19 sort of standard, you know, against which you  
20 would measure the involvement and interaction  
21 of the key participants in the deliberations  
22 regarding the proposed settlement. Is that  
23 correct?

24 MR. SIDMAN: Objection.

25 A. Other than the material I've looked

1 lawsuit?

2 MR. SIDMAN: Objection.

3 A. Could you clarify that?

4 Q. Sure.

5 How do you know what all the things  
6 are that are involved in determining whether to  
7 settle a lawsuit?

8 MR. SIDMAN: Objection.

9 A. In terms of how to settle the  
10 lawsuit?

11 Q. Whether to settle the lawsuit.

12 A. Whether to settle the lawsuit.

13 Q. How do you know what all those things  
14 are?

15 MR. SIDMAN: Objection.

16 A. How I know is simply, again, by  
17 looking at the various components of each one  
18 of those. How do I know that -- that the level  
19 of risk, for example, on a portfolio that  
20 you're undertaking for settlement is a proper  
21 level of risk? Well, you first have to ask  
22 yourself: Do we even have the right numbers?  
23 You have to ask the right questions, first of  
24 all. That's fairly commonsensical. There's no  
25 magic. You're not going to go to school to

1 learn this stuff. This is stuff that you have  
2 to experience up front. And all I'm saying is  
3 that by looking at what I have observed and  
4 what I have experienced at the level that I  
5 have operated at, that I think I have a pretty  
6 keen insight as to what it takes to be able to  
7 understand the kind of risks that they're up  
8 against and the timing of decisions that would  
9 go on that would be prudent for them to  
10 actually make a decision on these matters.

11 Q. Do you know the legal issues, all the  
12 legal issues involved?

13 MR. SIDMAN: Objection.

14 A. I am not being -- I have no knowledge  
15 of the legal issues.

16 Q. Have you ever tried to determine what  
17 a finder of fact is driven by in making their  
18 determination?

19 MR. SIDMAN: Objection.

20 A. Again, not having a legal background,  
21 I could not opine on that.

22 Q. Have you ever assessed what the cost  
23 of a lawsuit is?

24 MR. SIDMAN: Objection.

25 A. I have personally not had any

1 involvement in assessing that cost.

2 Q. Have you ever assessed what the  
3 impact of a lawsuit is on the functioning of  
4 the board or its senior management?

5 MR. SIDMAN: Objection.

6 A. Can you restate that, please?

7 Q. Sure.

8 Have you ever assessed what the  
9 impact is of the pendency of a lawsuit on the  
10 functioning of senior management and the board  
11 of a company?

12 MR. SIDMAN: Objection.

13 A. The reason why I -- I'm thinking  
14 about this is, I go back to my experience that  
15 we discussed regarding Citigroup. And at the  
16 time I was highly involved in working with the  
17 various government regulatory agencies in  
18 coming up with an estimate of what our  
19 exposures were. So from that standpoint, I  
20 have seen and been involved with matters  
21 relating to what could otherwise have put  
22 Citigroup into that TARP program, which is a  
23 settlement of sorts.

24 Q. Have you ever assessed what the --  
25 what the opportunity cost is associated with

1 discovery in a big case?

2 MR. SIDMAN: Objection. Answer if  
3 you can.

4 A. I'm thinking.

5 I'm not sure.

6 Q. Do you have any recollection of ever  
7 doing that?

8 MR. SIDMAN: Objection.

9 A. I have recollection. I just can't  
10 comment with specificity.

11 Q. Okay. And how do you know about --  
12 how discovery works in a big case?

13 MR. SIDMAN: Objection.

14 A. Because when -- I'm going back to my  
15 time again at Citigroup for a moment, because I  
16 know that we worked -- I, as chief risk officer  
17 of US consumer lending, had been tasked to work  
18 with the senior counsel at Citigroup in looking  
19 at put-back requests and put-back demands -- we  
20 were working together on these things -- and  
21 what sorts of information we would need to be  
22 able to get our arms around that. So that's  
23 sort of where I'm trying to answer your  
24 question.

25 Q. All right. I got you.

4 A. Beyond that, no.

5 Q. No?

6 (There is an off-the-record  
7 discussion.)

8 BY MR. PRINCI:

9 Q. And I take it -- but just correct me  
10 if I'm wrong -- that it's the same  
11 qualifications that you previously testified to  
12 that presumably -- again, correct me if I'm  
13 wrong -- make you an expert on determining  
14 whether or not there was appropriate  
15 involvement and interaction of key participants  
16 in the deliberations regarding the proposed  
17 settlement. Is that correct?

18 MR. SIDMAN: Objection. Asked and  
19 answered.

20 A. That is correct.

21 O. Okay.

22 MR. PRINCI: We could take a break  
23 now for lunch. Why don't we break for  
24 half an hour and change, which would bring  
25 us to 1:45. Does that work for everybody?

1 Q. Is encapsulated by some degree the  
2 earlier one?

3 A. What I'm saying is that my -- that my  
4 expertise that we referenced in that earlier  
5 statement -- that earlier answer is -- would be  
6 what I used here in saying that qualifies me as  
7 an expert to comment on item number four.

8 Q. Understood.

9 MR. SIDMAN: Mr. Princi, let him  
10 finish his answer.

11 Q. If you turn to paragraph number 15.  
12 And in the second line you reference corporate  
13 governance and risk governance.

14 What is meant by "risk governance"?  
15 A. Sure. So risk governance are the  
16 practices and the processes that oversee the  
17 activities that are entailed in risk  
18 management.

19 So what that means is the structure,  
20 the operating structure of the risk management  
21 organization. Who reports to who? It's the  
22 committee structure by which information flows  
23 from analysts that are preparing, say, credit  
24 losses to, say, a risk committee that's  
25 reviewing them, then up to an executive

1 then, say the lower echelon of staff in  
2 communicating information up the chain.

3 It's also -- corporate governance  
4 also entails around the structure by which  
5 shareholders are assessing the performance of  
6 the company and are they active and what's  
7 going on with that?

8 So from a totality of how the  
9 company's actually operating, or governed,  
10 corporate governance, the subsuming issues  
11 around the board, their interactions with  
12 shareholders or creditors as the case may be,  
13 as well as the interactions between senior  
14 management.

15 Q. Okay. With risk governance, again, I  
16 believe you testified being, if you will, a  
17 subset of -- a specialized subset of that?

18 MR. SIDMAN: Objection.

19 A. I would consider risk governance to  
20 be -- I call it out separately because I'm  
21 also, you know, an expert in risk management  
22 issues. But at the top of the house, looking  
23 at corporate governance issues, I would tend to  
24 subsume risk governance within the overall  
25 discussion of corporate governance.

1 Q. Okay. Now, with respect to the area  
2 of expertise you just referenced, if you look  
3 at paragraph 12, you say, "My expertise  
4 relevant to this matter relates to risk  
5 governance."

6 Is that your belief?

7 MR. SIDMAN: Objection.

8 A. My expertise certainly is -- includes  
9 that, yes.

10 Q. Okay. And I'm correct you're not  
11 saying in paragraph 12 that I see that you're  
12 an expert in the area of corporate governance.  
13 Correct?

14 MR. SIDMAN: Objection.

15 A. I -- again, I believe that my  
16 background does make me an expert in corporate  
17 governance.

18 Q. Is that referenced in paragraph 12?

19 MR. SIDMAN: Objection.

20 A. It's not specifically referenced.

21 Q. Okay. So while it's not in paragraph  
22 12, you also believe you're an expert in  
23 corporate governance. Correct?

24 MR. SIDMAN: Objection.

25 A. I think based on my expertise I am.

1 Q. If you look at paragraph 15, and in  
2 particular look at 15 subparagraph I.

3 MR. SIDMAN: There's two  
4 subparagraphs I.

5 Q. I'm sorry. Let's start with the main  
6 paragraph as opposed to the indented  
7 paragraphs. Okay?

8 So paragraph 15, and it's the first  
9 two lines. You say, "My opinion is that the  
10 process surrounding the proposed settlement  
11 suffered from, subparagraph one, numerous  
12 deficiencies surrounding corporate and risk  
13 governance."

14 And then you continue, and in the  
15 other sub -- in the indented subparagraph one,  
16 okay, you say, "The process for informing the  
17 ResCap board of directors as to the negotiation  
18 in terms of the proposed settlement was not  
19 consistent with corporate governance best  
20 practices."

21 Do you see that?

22 A. I see that.

23 Q. Okie doke.

24 How do you know what the corporate  
25 governance best practices are?

1 MR. SIDMAN: Objection.

2 A. I refer you back to that office of  
3 the controller currency document as one as  
4 the -- when you asked me standards by which I  
5 was measuring that. So I'll answer by saying  
6 that that OCC document is the relevant document  
7 for that question.

8 Q. For that question. Okay.

9 And have you ever been retained to  
10 advise a company on corporate governance  
11 practices?

12 MR. SIDMAN: Objection.

13 Q. Let me rephrase it.

14 Have you ever been retained to advise  
15 a company on corporate governance best  
16 practices?

17 MR. SIDMAN: Objection.

18 A. No.

19 Q. Has anyone asked you to advise them  
20 on that?

21 MR. SIDMAN: Objection.

22 A. Let me -- could I get you to restate  
23 the question? I'm sorry.

24 Q. Sure.

25 Has anybody asked you to advise them

1 on corporate governance best practices?

2 MR. SIDMAN: Objection.

3 A. Yes.

4 Q. And who?

5 A. I had a consultation with one of the  
6 clients. I can't remember if it was Coleman  
7 Research Group or GLG, that I referenced in my  
8 earlier testimony, where they were asking me to  
9 provide them with guidance around what --  
10 almost verbatim -- best practices of setting up  
11 a risk organization. And since we said that  
12 risk governance was subsumed within corporate  
13 governance, I'm referring to that.

14 Q. Okay. All right.

15 So that's -- in that sense, if you  
16 will, that's how you've been asked. Correct?

17 A. That is correct.

18 MR. SIDMAN: Objection.

19 Q. Okay. Have you ever taught a course  
20 on corporate governance best practices?

21 MR. SIDMAN: Objection. Asked and  
22 answered.

23 A. I have had, as I said in earlier  
24 testimony, the China Development Bank executive  
25 program.

1 Q. Other than that?

2 A. Other than that, no.

3 Q. And I take you consider yourself an  
4 expert in the area of corporate governance best  
5 practices?

6 MR. SIDMAN: Objection.

7 A. I consider myself an expert in  
8 corporate governance, and so that would imply  
9 that I should know something about best  
10 practices.

11 Q. Well, a lot of people know something  
12 about something but aren't expert. What I'm  
13 asking you is whether you consider yourself to  
14 be an expert in the area of corporate  
15 governance best practices?

16 MR. SIDMAN: Objection.

17 A. And I would say, yes.

18 Q. Okie doke. Now, later on in that  
19 same subparagraph you say -- you reference  
20 industry norms.

21 What industry are you referring to?

22 A. I'm talking about the financial  
23 services industry.

24 Q. Okay. So the FIG sector so to speak.

25 Correct?

1 MR. SIDMAN: Objection.

2 A. Could you clarify?

3 Q. Financial industry group. Let's use  
4 your nomenclature, not mine.

5 A. Financial services.

6 Q. Financial services industry, okay.

7 And what was your basis for defining  
8 the industry for which you were going to assess  
9 industry norms as the financial services  
10 industry as opposed to, for example, a mortgage  
11 services company?

12 MR. SIDMAN: Objection.

13 A. Right. So the basis for that was  
14 that I -- I can find my review to the financial  
15 services sector, in largely commercial banking  
16 sector to be more specific, but I was not  
17 looking specifically -- drilling down any more  
18 specifically to mortgage servicing simply  
19 because all of the -- corporate governance,  
20 quite honestly, whether it's a mortgage  
21 servicing institution or it's a commercial bank  
22 or a thrift or a nonbank, those that are  
23 publicly-traded institutions and have boards of  
24 directors have governance structures that we're  
25 talking about here are certainly representative

1 MR. SIDMAN: Objection.

2 Misstates testimony.

3 A. No. Whether or not that institution  
4 is in credit card securitization or automobile  
5 receivable securitization or mortgage  
6 securitization or none of the above, what we're  
7 getting at here is that the governance  
8 structure, an apparatus that's used to come at  
9 decisions for these companies, is somewhat --  
10 can be generalized in terms of the types of  
11 decisions, the type of information that has to  
12 flow to those boards, the type of interaction  
13 that those boards have with senior management,  
14 etc., that from that standpoint makes it --  
15 makes financial institutions sector a good  
16 guidepost as a means of comparison.

17 Q. And you think the more generalized  
18 industry group is better than a narrow one even  
19 though that will include regulated companies.  
20 Correct?

21 MR. SIDMAN: Objection.

22 A. I did not want to include a more  
23 narrow focus because that could actually --  
24 would be limiting from the standpoint of not  
25 having a large enough experiential base from

1 which I could draw conclusions.

2 Q. So you think that ResCap's  
3 competitors, which are not banks, aren't big  
4 enough to compare ResCap to. Is that correct?

5 MR. SIDMAN: Objection. Misstates  
6 testimony.

7 A. I think, if we're looking at best  
8 practice performance at these institutions,  
9 it's better to have a broader -- a broader  
10 subset by which to compare.

11 Q. Okay. And that for you is more  
12 important than any differences that may or may  
13 not exist between a regulated company and  
14 ResCap. Correct?

15 MR. SIDMAN: Objection.

16 A. I think that, from the standpoint of  
17 a regulated entity, there are certainly some  
18 differences, but the differences that relate  
19 between the regulator and the board of  
20 directors were not considered by me for this  
21 particular situation.

22 Q. Okay. Do you think that they're  
23 considered by the OCC in the OCC's report?

24 MR. SIDMAN: Objection.

25 A. I know that in that -- to clarify the

1 report that I'm citing in my testimony --

2 Q. Uh-huh.

3 A. -- that report does contain  
4 information back there that describes what  
5 regulated entities -- you know, the activities  
6 that the boards need to be considering and  
7 reviewing as part of a regulated entity.

8 Q. So is the answer yes?

9 MR. SIDMAN: Objection.

10 A. The answer would be yes.

11 Q. Okay. Later on in that same  
12 subparagraph you say that the process was not  
13 consistent with guidelines generally applicable  
14 to bank directors. And that's the guidelines  
15 contained in the OCC report. Correct?

16 A. Yes.

17 Q. Okie doke. Now, in the first page of  
18 your report, look at the caption. You see it  
19 says, "Residential Capital, LLC"?

20 A. Could you direct me to what --

21 Q. Sure. First page of your report,  
22 very first page.

23 A. Oh, yes.

24 Q. And the caption, you see it says,  
25 "Residential Capital, LLC"?

1 A. I see that.

2 Q. Do you know what a LLC is?

3 A. Limited liability corporation.

4 Q. Do you know what that is?

5 A. I know that that is not a commercial  
6 bank.

7 Q. Okay. So we know one thing it's not.

8 Do you know what it is?

9 A. It is -- again, I'm not -- I am not  
10 an expert on that particular structure, but I  
11 will say that I understand that it is -- it's  
12 an entity that does not -- I guess in my  
13 parlance I would refer to it as a nonbank  
14 financial institution.

15 Q. Okay. Now, do you know under what  
16 state's law ResCap, LLC operates?

17 MR. SIDMAN: Objection.

18 A. No.

19 Q. Okay. You understand that the  
20 guidelines for banks that the OCC puts out,  
21 that operates under Federal law. Correct?

22 MR. SIDMAN: Objection.

23 A. I understand that.

24 Q. And you understand as well, right,  
25 that corporations, including LLCs, limited

1 liability companies, operate under state laws,  
2 correct?

3 MR. SIDMAN: Objection.

4 A. Yes.

5 Q. Okie doke. So you don't know what  
6 state law ResCap, LLC operates under.

7 Do you know what differentiates an  
8 LLC from a corporation, for example?

9 MR. SIDMAN: Objection.

10 A. Again, I am not an expert on specific  
11 legal aspects -- legal vehicles from that  
12 standpoint.

13 Q. Do you know what the fiduciary duties  
14 are of a director of an LLC?

15 MR. SIDMAN: Objection.

16 A. I do -- I am not aware specifically  
17 of those duties and how they may or may not  
18 differ from those of a commercial bank.

19 Q. Okay. Do you know to whom a director  
20 of an LLC owes a fiduciary duty?

21 MR. SIDMAN: Objection.

22 A. I will answer based on the prior  
23 question that I'm not sure.

24 Q. Okie doke. So in paragraph 15 --  
25 this is now the indented subparagraph two --

1 whatever time they had. Right? And they used  
2 that.

3 Do you know what standards should be  
4 used to determine whether their conduct in that  
5 regard met their obligations as a board member?

6 A. Yes.

7 Q. Okay. And what standards should that  
8 be?

9 A. That standard, in my opinion, should  
10 be the duty-of-care provision that I cite in  
11 this OCC document, again, realizing that these  
12 are commercial banks, regulated entities with  
13 Federal responsibilities or subject to Federal  
14 law, that is. But at the end of the day, that  
15 duty-of-care provision is something that, from  
16 a best-practice standpoint, board of boards of  
17 directors should be adhering to.

18 Q. So would you agree with me that the  
19 standards enunciated under Federal law don't --  
20 for a bank director don't apply to the ResCap  
21 board? Would you agree with that?

22 MR. SIDMAN: Objection.

23 A. I'm not sure I'd agree with it --

24 Q. Okay.

25 A. -- because what -- I want to make

1 sure I understand your question correctly.

2 Q. Sure.

3 A. What I -- I guess what I'm saying is  
4 that, but for this duty-of-care benchmark -- we  
5 were talking about originally, I thought -- and  
6 you correct me if I'm wrong -- about best  
7 practices. And that is a -- that would be  
8 considered a best practice. Whether that's a  
9 regulated commercial bank or a -- an LLC that's  
10 subject to state law, the board, in my opinion,  
11 from a best-practice standpoint, should use  
12 that duty of care in determining whether or not  
13 they're acquiring the right information, that  
14 they're evaluating that information, and that  
15 they're participating at those board meetings  
16 in that matter.

17 Q. Okay. And you're saying that you  
18 divine the best practice from the Federal law  
19 guidelines, not from what it says under state  
20 law. Correct?

21 MR. SIDMAN: Objection.

22 A. I am not even taking into account the  
23 legal aspect because I'm not being asked to  
24 opine about the legal aspects of this. I'm  
25 being asked about process, governance, and

1 actually, to be more specific, best practices  
2 among those.

3 Q. Can I ask you -- you say you're not  
4 opining on a legal aspect.

5 Could you take a look at footnote 4?

6 MR. SIDMAN: Footnote? What  
7 footnote?

8 MR. PRINCI: Footnote 4.

9 A. What page is that?

10 Q. It's on page 6.

11 A. Okay.

12 Q. Okay. And you see there it says,  
13 "Counsel has informed me that ResCap is a  
14 Delaware corporation. And Delaware corporation  
15 law imposes a duty of care upon directors"?

16 Do you see that?

17 A. I see that.

18 Q. Would you agree with me that you had  
19 to rely on that, in part, in reaching your  
20 opinions here?

21 MR. SIDMAN: Objection.

22 A. My opinion -- if we go back to  
23 actually earlier testimony in the drafting and  
24 the process by which I came to my own  
25 conclusions, I had already come to the

1 conclusion that, independently, that the  
2 duty-of-care provision, as we saw it in the OCC  
3 document, was an appropriate standard that all  
4 boards of directors should be adhering to and  
5 that, just as counsel had informed me, this LLC  
6 was also subject to this duty-of-care provision  
7 from the state level.

8 Q. Okay.

9 I need to ask you: Would you agree  
10 that directors of banks owe fiduciary duties to  
11 different parties than directors of an LLC?

12 MR. SIDMAN: Objection.

13 A. In my opinion, I believe that the  
14 duty-of-care provision, regardless of that  
15 legal vehicle -- that those boards of directors  
16 should be adhering to a duty-of-care provision  
17 regardless if it's a commercial bank or a  
18 state-chartered entity.

19 Q. Okay. Let me try to clarify my  
20 question.

21 Would you agree that directors of a  
22 bank owe fiduciary duties to different parties  
23 than a director of an LLC?

24 MR. SIDMAN: Objection.

25 A. Owe different?

1 Q. Fiduciary duties.

2 A. Fiduciary duties --

3 Q. Yes, sir.

4 A. -- than of an LLC?

5 Q. Yes, sir.

6 A. If we get into the specifics of it,

7 I'm not sure that I'd be able to say yes or no

8 on that. But I don't know.

9 Q. You don't know. Okay.

10 Are you aware that bank directors owe  
11 a fiduciary duty to depositors?

12 A. They have a fiduciary responsibility  
13 to shareholders and to depositors, and that's  
14 probably the extent of it.

15 Q. So the answer is yes?

16 A. Yes.

17 Q. Okay. And are you aware that LLC  
18 directors don't owe a duty to depositors?

19 MR. SIDMAN: Objection.

20 A. Well, in the case of an LLC, it's  
21 unlikely that it's going to have depositors in  
22 the classic case of a commercial bank.

23 Q. So you agree with me. Correct?

24 A. It's a long-winded way of saying yes.

25 Q. Okay. Are you aware that bank

1 directors owe a fiduciary duty to the  
2 regulators?

3 A. The fiduciary responsibility of the  
4 regulators is somewhat different, but there is  
5 a responsibility back to adhere to what the  
6 safety and soundness regulators require.

7 Q. Okay. And would -- as a result of  
8 that, you agree with me that a director of a  
9 bank owes a fiduciary duty to regulators?

10 MR. SIDMAN: Objection.

11 A. Yes.

12 Q. And would you agree with me that  
13 directors of an LLC do not?

14 MR. SIDMAN: Objection.

15 A. Yeah. The LLCs are, again, a  
16 different type of legal vehicle that are not  
17 subject to the same level of regulations, so I  
18 guess another long-winded way of saying yes.

19 Q. Okay. Are you aware that bank  
20 directors owe a fiduciary duty to the  
21 communities they serve?

22 MR. SIDMAN: Objection.

23 A. Yes.

24 Q. Are you aware that LLC directors  
25 don't?

1 MR. SIDMAN: Objection.

2 A. I'm not aware.

3 Q. Are you aware that bank directors  
4 face unique challenges not faced by directors  
5 of an LLC because they are different from other  
6 corporations?

7 MR. SIDMAN: Objection.

8 A. There are important differences in  
9 their activities and focus.

10 Q. So that would be a yes, too?

11 MR. SIDMAN: Objection.

12 A. Yes.

13 Q. Okay. And are you aware that a  
14 bank's board of directors have to make sure  
15 that the board's plans and policies help to  
16 meet the credit needs of the communities that  
17 the bank serves?

18 MR. SIDMAN: Objection.

19 A. I'm aware of that.

20 Q. Okay. And are you aware that that is  
21 not true of an LLC?

22 MR. SIDMAN: Objection.

23 A. I'm not aware of that.

24 Q. You don't know one way or the other,  
25 you're saying?

1 A. Not one way or the other.

2 Q. Okeydoke. If you look back at --  
3 excuse me a moment.

4 Look back at paragraph 15, indented  
5 subparagraph 2.

6 What standards should be used to  
7 determine how far in advance the board should  
8 be given appropriate information?

9 MR. SIDMAN: Objection.

10 A. In my opinion, I think that's going  
11 to vary by the materiality and the visibility,  
12 the impact, the uniqueness of the business  
13 issue being debated.

14 Q. Okay. And so, did you know what the  
15 objective of the ResCap board was in connection  
16 with considering the proposed settlement?

17 MR. SIDMAN: Objection.

18 A. The objective of the -- of just the  
19 settlement, or are we linking it to the plan  
20 support agreement?

21 Q. The objective of -- what did you know  
22 when you gave these opinions what the objective  
23 of the ResCap board was in determining whether  
24 to enter into the proposed settlement?

25 MR. SIDMAN: Same objection.

1 metaphors, I think. We're mixing legal  
2 metaphors with governance metaphors. A  
3 governance metaphor is: How much time do you  
4 think is appropriate? I doubt you're going to  
5 find that in a legal statute that's going to  
6 demarcate and say: You need at least three  
7 hours ahead of a board meeting. I know of  
8 nothing in my experience, by the way, that has  
9 that.

10 Q. Okay. So you'd agree with me that  
11 what is an appropriate amount of time is a  
12 relative question. Correct?

13 MR. SIDMAN: Objection.

14 A. I would say that is -- absolutely is  
15 a relative question.

16 Q. Okay. And that would be true of the  
17 situation facing the ResCap board when they  
18 were determining whether to enter into the  
19 proposed settlement. Correct?

20 MR. SIDMAN: Objection.

21 A. I agree.

22 Q. Okay. Now, do you know what time  
23 constraints they faced in connection with  
24 considering the proposed settlement?

25 MR. SIDMAN: Objection.

1 A. Broadly speaking.

2 Q. You do?

3 A. Broadly speaking.

4 Q. Okay. And where did you learn that  
5 from?

6 A. By reviewing the materials that were  
7 provided to me.

8 Q. Okay. And what's your understanding  
9 of the time constraints that they were facing?

10 A. That -- I understand that they --  
11 that they -- whether or not they were  
12 self-imposed or not, there were very tight  
13 timelines by which to come to a decision on  
14 this because it was, in some respects, linked  
15 to a variety of other outcomes, such as the  
16 bankruptcy decision and the plan support  
17 agreement that was part of the proposed  
18 settlement.

19 Q. Okay. So you did understand that  
20 they were operating under very tight timelines?

21 MR. SIDMAN: Objection.

22 Q. And did you also understand what  
23 benefit they -- the estate would get by  
24 entering into the proposed settlement?

25 MR. SIDMAN: Objection. Misstates

1 question, but perhaps it doesn't. You can  
2 certainly tell me if it doesn't.

3 Q. Sure.

4 A. Yeah. I guess I would go to page 7.  
5 And on -- let's see. On paragraph 19 where I  
6 cite that, in one of the board members  
7 testimony here, that he was not aware that AFI  
8 played a significant role in driving the  
9 negotiations. He also believed that the  
10 company's attorneys, at the very bottom of page  
11 7, going over to the top of page 8, were  
12 responsible for leading the settlement process  
13 from the legal side and that Thomas Marano,  
14 chairman of the ResCap board, was in charge on  
15 a business level.

16 But then I also cite, third line down  
17 on page 8, "Mr. Marano, however, testified at  
18 deposition that he was only generally aware of  
19 the concepts behind the proposed settlement  
20 prior to receiving the board meeting documents,  
21 and he was neither copied on relevant e-mails  
22 nor seemingly involved in the negotiations at  
23 all." That's the basis on which I was making  
24 that determination.

25 Q. Okay. And are you aware of whether

1 Morrison & Foerster updated the board members  
2 with respect to this? Other than your  
3 reference to Mr. Mack's and Mr. Marano's  
4 deposition, are you aware?

5 MR. SIDMAN: Objection.

6 A. I'm am not aware beyond that.

7 Q. Okay. And are you aware of  
8 whether -- did you ever hear the name Tammy  
9 Hamzehpour? Does that name ring a bell?

10 A. I am aware of who she was.

11 Q. Okay. And who was she?

12 A. I believe it may have been general  
13 counsel of ResCap.

14 Q. Okay. And are you aware whether she  
15 provided anybody any updates during that time  
16 period?

17 MR. SIDMAN: Objection.

18 A. I am not aware, other than through  
19 the materials that I reviewed, that she  
20 provided any updates.

21 Q. Okay. And do you know what FTI is?

22 A. I know that was one of the advisory  
23 companies that was brought on to facilitate  
24 some of the analysis behind the settlement.

25 Q. Okay. And are you aware of whether

1 they provided any updates to any of the board  
2 members throughout that process?

3 MR. SIDMAN: Objection.

4 A. I don't know the extent to what they  
5 provided to the board members.

6 Q. Okay. And would you have wanted to  
7 have known that information before forming a  
8 final opinion?

9 MR. SIDMAN: Objection.

10 A. I would -- I felt that the  
11 information that was being -- the testimony of  
12 two significant board members was sufficient --  
13 a sufficient factual record for me to base my  
14 decision.

15 Q. Now, you say further in that  
16 paragraph that at times there appeared to be  
17 conflicts of interest.

18 Do you see that?

19 A. I see that.

20 Q. Okeydoke.

21 Now, how do you know that?

22 MR. SIDMAN: Objection.

23 A. Again, the basis on which I make that  
24 statement is by looking at the testimony and  
25 the other materials they provided to me that

1 A. I have not.

2 Q. Do you know what the objectives are  
3 for a board when it's preparing to enter a  
4 company into Chapter 11?

5 MR. SIDMAN: Objection.

6 A. I'm not aware of the specifics of  
7 those.

8 Q. Do you know what the objectives are  
9 for a board when it is in bankruptcy?

10 A. I am not familiar with the specifics  
11 of those issues.

12 Q. Okay. If you take a look again at  
13 paragraph 15 in indented subparagraph three,  
14 the second sentence you say, "As a result,  
15 important information regarding the proposed  
16 settlement does not appear to have flowed to  
17 appropriate risk review committees," etc.

18 Do you see that?

19 A. I do see that.

20 Q. And in fact, you don't know with a  
21 certainty whether all that information did or  
22 didn't self flow. Correct?

23 MR. SIDMAN: Objection.

24 A. I don't, based only on the  
25 information I had I did not see that.

1 Q. That's why you chose the word  
2 "appear." Correct?

3 MR. SIDMAN: Objection.

4 A. That is correct.

5 Q. And then similarly if you look at  
6 paragraph 16, second sentence, you say, "In  
7 fact, it appears that until the settlement was  
8 presented," etc., "some of the directors were  
9 unaware," etc.

10 And again, you don't know that as a  
11 matter of certainty. Correct?

12 MR. SIDMAN: Objection.

13 A. True.

14 MR. SIDMAN: Talking about the second  
15 sentence there?

16 MR. PRINCI: Yes, sir.

17 A. I'm sorry. Could you restate again?

18 Q. Sure.

19 In the second sentence you say, "In  
20 fact, it appears that until the settlement was  
21 presented to the board on May 9, some of the  
22 directors were unaware that a settlement  
23 process was ongoing."

24 What I'm saying is you don't actually  
25 know that for a certainty. Correct?

1 MR. SIDMAN: Objection.

2 A. I only know what I read in the  
3 materials provided, but I don't know if there  
4 was any other information.

5 Q. Correct, you don't know one way or  
6 the other?

7 A. Beyond what I was asked to look at,  
8 correct.

9 Q. That's why you can't say that with  
10 any certainty and that's why you had to use the  
11 phrase "it appears." Correct?

12 MR. SIDMAN: Objection to the  
13 phrasing of the word "certainty."

14 A. Substantially correct, yes.

15 Q. And in fact, in paragraph 16, you  
16 don't know what other persons potentially did  
17 give the directors information. Correct?

18 MR. SIDMAN: Objection.

19 A. I'm not aware beyond what materials I  
20 have reviewed.

21 Q. Okay. And in addition to not knowing  
22 from whom else they may have received  
23 information, you don't know what type of other  
24 information they may have received. Correct?

25 MR. SIDMAN: Objection.

1           Hypothetical, assumes facts not in  
2           evidence.

3           A.    I'm basing my statements here that  
4           you're referencing solely on the transcripts of  
5           depositions from two significant board members.

6           Q.    Understood.

7           A.    Yes.

8           Q.    And based on what you have reviewed,  
9           that still leaves you however unable to say  
10           with certainty that they didn't receive more  
11           information that would have been sufficient.

12           Correct?

13                    MR. SIDMAN: Objection.

14           A.    Correct.

15           Q.    Okay. Do you know who Tom Marano is?

16           A.    Yes.

17           Q.    Who is he?

18           A.    He was -- he is at the time a board  
19           member on ResCap and CEO.

20           Q.    Okay. Do you understand that he has  
21           extensive experience in the mortgage  
22           securitization business?

23                    MR. SIDMAN: Objection.

24           A.    I completely understand that.

25           Q.    Right. And you knew of his name

1 before he was at ResCap. Correct?

2 A. That's correct.

3 Q. And you knew that because he is, and  
4 has been for many, many years, one of the  
5 leading "players" in that business. Correct?

6 MR. SIDMAN: Objection.

7 A. I understand that he is a significant  
8 individual in the mortgage business.

9 Q. Okay. Now, do you know whether he  
10 shared any of this information with board  
11 directors orally?

12 MR. SIDMAN: Objection.

13 A. I infer from the board meeting  
14 minutes, which were very slim to begin with,  
15 that there was some interaction. But I don't  
16 know the substance of that discussion at the  
17 board meeting or prior -- the 20 minutes prior  
18 to when the material was provided to the board  
19 members.

20 Q. Okay. In its last sentence of 16 you  
21 say, "The lack of information forwarded to and  
22 the information afford by ResCap's board was  
23 outside of the industry norm and led to a  
24 fundamentally flawed decision-making process."

25 What is the industry norm for

1 consideration of a settlement like this prior  
2 to entering into a Chapter 11 case?

3 MR. SIDMAN: Objection.

4 A. I know what it is not and it is not  
5 20 minutes received ahead of the board meeting  
6 and a 30-minute board discussion.

7 Q. And do you know what it is?

8 MR. SIDMAN: Objection. Asked and  
9 answered.

10 A. We've had a conversation about this  
11 earlier and there are no bright lines. But,  
12 again, I'm being asked as an expert on these  
13 matters to render an opinion based on my  
14 judgment on process. And I'll tell you that it  
15 certainly is not 20 minutes on a matter  
16 relating to an \$8.7 billion settlement.

17 Q. Yeah, but you can't know for sure  
18 whether it is because you don't know what  
19 exigencies existed in connection with the  
20 bankruptcy case. Is that correct?

21 MR. SIDMAN: Objection. Misstates  
22 testimony.

23 A. I certainly don't understand those  
24 issues and matters.

25 Q. Okay. If you take a look again at

1 footnote four, it's on page six.

2                   Was this footnote one of the edits  
3 that Jones Day gave you to content?

4                   A.     Footnote four?

5                   Q.     Yes, sir.

6                   A.     This was -- this was an edit that I  
7 believe was provided.

8                   Q.     Okay. And in the absence of  
9 counsel's providing you with this information,  
10 you wouldn't have been aware of this yourself.  
11 Correct?

12                   MR. SIDMAN: Objection.

13                   A.     I would have been aware but it  
14 wouldn't have made any difference because in my  
15 stated testimony here I had already made that  
16 decision upfront by looking at the OCC duty of  
17 care provisions.

18                   Q.     Okay. Take a look at page seven of  
19 your report. The first full sentence. You  
20 say, "It is my opinion that the board was  
21 unable to render a decision consistent with the  
22 duty of care requirement."

23                   Do you see that?

24                   A.     Yes, I do see that.

25                   Q.     Right. And then you actually

1 woefully insufficient for me to come to any  
2 kind of conclusion that would have made me feel  
3 comfortable about approving or not approving  
4 the deal without other information.

5 Q. But you don't know whether the board  
6 members didn't have that information. Right?

7 MR. SIDMAN: Objection. Calls for  
8 speculation, asked and answered.

9 A. I do know from testimony that two  
10 board members had very little information about  
11 the contours of the transaction until the end.

12 Q. You don't know that Mr. Marano didn't  
13 have the information about the contours of the  
14 transaction in an industry where he's one of  
15 the most experienced people on the street. Is  
16 that your testimony?

17 MR. SIDMAN: Objection. Misstates  
18 his testimony, calls for speculation.

19 A. I'd actually be surprised that it  
20 wasn't in his deposition for something as  
21 significant.

22 Q. He wasn't asked the question.

23 MR. SIDMAN: Objection. I don't even  
24 know where to begin but let's just move  
25 on.

1           Q.     If this was so significant to you,  
2     again why didn't you call rather than give an  
3     opinion in a case when you could have spoken to  
4     these people? Why didn't you do that?

5           MR. SIDMAN: Objection. Asked and  
6     answered.

7           A.     I relied on just the information that  
8     was provided. I don't see -- I'm not going to  
9     pick up the phone to Mr. Marano and ask him a  
10    question on a matter of litigation that he's  
11    highly involved with.

12          Q.     You don't think, knowing what your  
13    task was in this case, i.e., whether to testify  
14    against the proposed settlement, that  
15    Mr. Marano wouldn't have given you a  
16    considerable amount of time to talk to you  
17    about this?

18          MR. SIDMAN: Objection. Asked and  
19     answered.

20          Q.     Is that your testimony?

21          A.     Highly speculative. I don't know.

22          Q.     But do you believe that Mr. Marano  
23    would have had an incentive to want to talk to  
24    you about this if you had picked up the phone  
25    and called him?

1                   MR. SIDMAN: Objection. Calls for  
2                   speculations, hypothetical, assumes facts  
3                   not in evidence.

4                   Answer if you can -- and asked and  
5                   answered.

6                   A. It is speculative. There's no  
7                   question and at the end of the day, I simply  
8                   don't know how he would have responded one way  
9                   or the other.

10                  Q. All right. You certainly can't sit  
11                  here in good faith and say that you think he  
12                  wouldn't have spoken to you. Correct?

13                  MR. SIDMAN: Objection.

14                  A. I don't know how it would have -- how  
15                  it could have come down one way or the other,  
16                  so I probably would have preferred not to say  
17                  definitively since I don't know.

18                  Q. You didn't get that choice?

19                  A. I don't know.

20                  MR. SIDMAN: Objection. Move on,  
21                  Counsel.

22                  Q. If you were in his shoes, would you  
23                  take a call from you?

24                  MR. SIDMAN: Objection. Calls for  
25                  speculation, hypothetical.

1                   Answer if you can.

2           A.    I don't know all the circumstances  
3    behind Mr. Morano's situation.  So from that  
4   standpoint I don't know.

5           Q.    Let me put you in his shoes.  Here's  
6   the hypothetical.  You're the CEO of a company  
7   who's got an \$8.7 billion proposed settlement  
8   in front of a Federal bankruptcy judge.  You  
9   get a phone call from a guy with your CV.  He  
10   says to you, hey, I've been hired by FGIC.  
11   They're asking me to look into the process you  
12   guys used and I looked at your deposition and  
13   here's my understanding.  Is there anything  
14   else I'm missing?

15               Now, that's the phone call you get.  
16   Right?  How would you respond to that phone  
17   call?

18               MR. SIDMAN:  Objection.

19               Hypothetical, assumes facts not in  
20   evidence, calls for speculation.

21                   Answer if you can.

22           A.    Not knowing Mr. Marano --

23           Q.    Not Mr. Marano, you, how would you  
24   respond to it?

25           A.    I wouldn't take the call.

1 MR. SIDMAN: Objection.

2 Q. You wouldn't?

3 A. Heck no.

4 Q. No?

5 A. Absolutely.

6 Q. Let me ask you this. You say that --

7 you don't know what Mr. Divine, by the way, did

8 or didn't do other than based on the transcript

9 you read. Right?

10 MR. SIDMAN: Objection.

11 A. That is correct.

12 Q. And again, you didn't try to call

13 Mr. Divine and ask him. Correct?

14 MR. SIDMAN: Asked and answered.

15 A. That is correct.

16 Q. Okie doke. So you take a look the

17 paragraph 20, please. Okay.

18 Now, you say, first one, the board,

19 and then you say, who was kept largely in the

20 dark over the short course of settlement

21 discussions.

22 And again, you only read the

23 transcript of two board members. Correct?

24 MR. SIDMAN: Objection.

25 A. Actually, I believe there was a

1 third, Mr. Whitlinger.

2 Q. Okay. But you didn't -- you don't  
3 have any information with respect to the other  
4 board members. Correct?

5 MR. SIDMAN: Objection.

6 A. That is correct, I only reviewed the  
7 testimony of those three.

8 Q. So how can you say the board in an  
9 unqualified way was kept largely in the dark?

10 A. The basis of that characterization is  
11 that you have three significant board members,  
12 Mr. Marano, who you just said was a significant  
13 name in the industry that, according to his own  
14 testimony that I read, which was the  
15 information that I had available to me,  
16 suggests that he was not very well informed of  
17 this situation.

18 Q. How much info should they have had?

19 MR. SIDMAN: Objection.

20 Q. According to you.

21 They were kept in the dark. What  
22 should they have had?

23 MR. SIDMAN: Objection.

24 A. In my opinion, they would have had at  
25 least this information -- instead of having a

1 you stated this as fact. You said, Mr. Cushman  
2 would have controlled Mr. Cancelliere's  
3 compensation, employment opportunities.

4 So let me tell you, would you be  
5 surprised if I told you that Mr. Cancelliere  
6 actually employed by GMACM?

7 MR. SIDMAN: Objection.

8 A. That did not come out in the  
9 statement.

10 Q. That's why you call people and ask  
11 them. You don't make these assumptions before  
12 you give these opinions, do you?

13 MR. SIDMAN: Objection.

14 Is that a question?

15 Q. Correct? Isn't that a good reason to  
16 make the phone calls and ask people, because  
17 you don't have full information?

18 MR. SIDMAN: Objection. Asked and  
19 answered countless times.

20 A. My view is that a statement under  
21 oath of your employment is a factual  
22 statement --

23 Q. Sure.

24 A. -- and I'm using that as the  
25 statement to form my opinion.

1 Q. Right. But he never testified that  
2 he was employed by Ally. You made an  
3 assumption based on your professional  
4 experience that because he reported to  
5 Mr. Cushman, that the rest of this has to be  
6 true, but it's not. It's false.

7 MR. SIDMAN: Is that -- there's no  
8 question there. It's a statement.

9 Are you making a representation of  
10 what Jeff Cancelliere's testimony is?

11 Q. Do you understand why it's  
12 important -- let me take a step back.

13 Can you understand that you would --  
14 strike that.

15 Would you agree with me that for the  
16 purposes of making this statement you would  
17 have been better off picking up the phone and  
18 calling Mr. Cancelliere and asking him?

19 MR. SIDMAN: Objection.

20 Q. Do you understand -- do you agree  
21 with me that you would have been better off  
22 doing that rather than making these assumptions  
23 you made?

24 MR. SIDMAN: Objection. Asked and  
25 answered, assumes facts not in evidence.

1                   Answer if you can.

2           Q.    What's your answer to that?

3           A.    My answer is I wouldn't have been  
4    better off because it would have been a pure  
5    waste of my time because if I'm -- as you said  
6    before, hypothetically, if I'm him, I wouldn't  
7    have taken my call.

8           Q.    But you don't believe that somebody  
9    who's trying to support -- who works for a  
10   company that's trying to support a settlement  
11   wouldn't want to correct your  
12   misunderstandings?

13                Why do you believe they wouldn't want  
14   to correct your misunderstandings?

15                MR. SIDMAN: Objection.

16           A.    Again, hypothetical. I don't know  
17   where he would or would not want to -- I know  
18   what I would do, and I simply wouldn't take a  
19   call out of the blue from somebody.

20           Q.    Okay. Okay.

21                All right. If you go to the bottom  
22   of the page, page 12, in the middle of that  
23   last sentence you say, "which allowed ResCap to  
24   internally vet the amount without its employees  
25   fearing reprisals."

1                   Do you see that?

2           A.    Yes.

3           Q.    Now, let me take a step back.

4   You're, I'm correct, implying that the ResCap  
5   employees did fear reprisals. Correct?

6                   MR. SIDMAN: Objection.

7           A.    I'm saying that, on the basis of my  
8   understanding of the information provided in  
9   Mr. Cancelliere's testimony about his reporting  
10   structure and on the lack of information that I  
11   saw throughout this set of documents that I had  
12   of no formal structure around risk committees  
13   evaluating this, that I formed an opinion that  
14   suggested that, yes, that in that case there  
15   could be a concern where Mr. Cancelliere could  
16   not actually convey the kind of risk estimates  
17   that he thought were warranted that may not  
18   have been supportive of the ultimate deal that  
19   was put on the table.

20           Q.    So it's an assumption on your part.

21   Correct?

22                   MR. SIDMAN: Objection.

23           A.    It is -- it is an opinion that I have  
24   based on reading the materials.

25           Q.    Okay. And would that opinion change

1 range of reasonableness. Is that correct?

2 A. That is correct.

3 MR. SIDMAN: Objection.

4 MR. DEVORE: Can you state the basis  
5 for your objection.

6 MR. SIDMAN: The range of  
7 reasonableness, I didn't understand what  
8 you meant by that.

9 Q. Do you understand what the range of  
10 reasonableness is?

11 A. Yes.

12 Q. You were not engaged to provide an  
13 expert opinion on whether the amount of the  
14 \$8.7 billion is within the range of  
15 reasonableness?

16 MR. SIDMAN: Same objection.

17 A. That is correct.

18 Q. And you are not, in fact, offering an  
19 expert opinion on whether or not the 8.7  
20 billion-dollar amount is the correct amount  
21 that should have been settled?

22 A. That is correct.

23 Q. So when this hearing begins in what's  
24 currently scheduled for March, you will not be  
25 opining to the Court on whether the settlement

1

2 C E R T I F I C A T E

3

4

5 I, MARK IUZZOLINO, a Certified Shorthand  
6 Reporter and Notary Public of the State of New  
7 Jersey certify that the foregoing is a true and  
8 accurate transcript of the testimony of the  
9 aforementioned first duly sworn by me.

10 I further certify that I am neither  
11 attorney or counsel for, nor related to or employed  
12 by, any of the parties to the action in which the  
13 deposition is taken, and further that I am not a  
14 relative or employee of any attorney or counsel  
15 employed in this case, nor am I financially  
16 interested in the action.

17

18

19

20 CERTIFIED SHORTHAND REPORTER

21 NOTARY PUBLIC OF NEW JERSEY

22 LICENSE NO. X101103

23

24

25